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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,481	06/04/2001	Eimar M. Boesjes	BOESJES4	5356

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EXAMINER

O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/874,481

Applicant(s)

Boesjes

Examiner

O'Connor

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on April 21, 2006 (RCE w/Amdt).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on June 4, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 21, 2006 has been entered.

### ***Preliminary Remarks***

2. This Office action responds to the amendment and arguments filed by applicant on April 21, 2006 in reply to the previous Office action on the merits, mailed December 21, 2005.

3. The cancellation of non-elected claims 1-22 by applicant in the reply filed April 21, 2006 is hereby acknowledged.

4. The amendment of independent claims 23, 31, 33, 34, and 41 by applicant in the reply filed April 21, 2006, in order "to correct a minor typographical error in the preamble," is hereby acknowledged. Applicant's remarks that the "amendments are not narrowing amendments, [and were not] made for reasons related to patentability" have been duly noted and are also hereby acknowledged.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al. (US 6,263,317).

Sharp et al. disclose a multiply-integrated method of product inventory, sales, and distribution, comprising: a programmed computer processor receiving product identifying information, pricing information, and product inventory information from multiple participating product suppliers and entering the information into a supplier database, wherein the multiple suppliers may include any of manufacturers, distributors, and retailers, and the suppliers offer products of a common category, receiving order information and storing it in a database, wherein the orders may be placed by multiple purchasers, wherein the multiple purchasers may include any of manufacturers, distributors, retailers, and retail purchasers, attempting to locate an available product for each ordered product, issuing instructions for delivery for each ordered product, updating inventory information, and creating a financial accounting record for each order, but the method of Sharp et al. does not explicitly disclose maintaining an order history by keeping a database of orders that have been fulfilled. However, maintaining an order history by keeping a database of orders that have been fulfilled is a well known, hence obvious, step to

follow in an electronic commerce system, and official notice to that effect is hereby taken. See MPEP § 2144.03. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Sharp et al. to maintain an order history by keeping a database of orders that have been fulfilled, as is well known to do, in order to allow purchasers to conveniently find/review what they had ordered previously so that they could reorder the same item, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results. Note that Sharp et al. define “distributor” so as “to include distributors of a product at all levels in the distribution claim, including retailers” (column 3, lines 29-32), thus, based on that definition and Figure 1, would inherently include the recited entity relationships and ordering relationships (i.e., both horizontal and vertical relationships).

Regarding claims 25-30, Sharp et al. fail to disclose that the purchaser has any particular relationship to any other entity associated with the product (i.e., a retailer of the product purchasing the product from another retailer of the product). However, the method of Sharp et al. does not preclude that one entity associated with the product could purchase the product from any other entity associated with the product, and one of ordinary skill in the art would instantly recognize the suitability of the method of Sharp et al. for performing such as step. See MPEP § 2144.07. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have used the method of Sharp et al. to allow any given entity associated with a particular product to purchase that product from any other entity

associated with that same product, in order to allow an entity that needed the product right away to obtain it even when their traditional source was unable to provide it right away, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claims 35-37, the method of Sharp et al. fails to disclose auctions/bidding, instead relying on traditional catalog fixed-price sales. However, auctions/bidding and fixed-price sales are considered art-recognized equivalents for determining/setting a sales price for an item being sold. See MPEP § 2144.06. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Sharp et al. by making a substitution of art-recognized equivalents by setting prices as the result of bidding rather than setting a fixed-price, merely as a matter of design choice, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claims 38-40, the method of Sharp et al. fails to include aggregating orders in real time. However, aggregating orders in real time is a well known, hence obvious, step to perform in any method of electronic ordering, and official notice to that effect is hereby taken. See MPEP § 2144.03. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Sharp et al. so as to allow aggregating of orders in real time, as is well known to do, in order to allow purchasers to increase their purchasing power by pooling their orders in real time, and since so doing could be

performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claims 42-44, the method of Sharp et al. fails to explicitly disclose that the method is used for selling products, wherein the products include used, rare, collectible, private-label, or out-of-production products. However, selling such products is well known, hence obvious, when performing such a method of electronic commerce, and official notice to that effect is hereby taken. See MPEP § 2144.03. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Sharp et al. so as to use it to sell any or all of used, rare, collectible, private-label, or out-of-production products, in order to use the method for as broad a range of products as possible, and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Any further details recited by the claims would all be considered either inherent in the described combination, or else self-evident or well known, hence obvious, to one of ordinary skill in the art, such that it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have made any necessary modifications, merely as a matter of design choice, since so doing could be performed by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

***Response to Arguments***

7. Applicant's arguments filed April 21, 2006 have been fully considered but are not persuasive.

8. Regarding the argument that Sharp et al. do not disclose a supplier database that includes product inventory information, Sharp et al. indeed disclose a supplier database that includes product inventory information. See, for example, column 5, lines 35-43.

9. Regarding the argument that Sharp et al. do not disclose multiple purchasers and multiple suppliers, Sharp et al. clearly disclose multiple "purchasers" and multiple "suppliers." To the extent that applicant is arguing that the references applied in the rejection fail to use the same *names* for certain elements as the names used by applicant, the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but *need not be in the identical words* as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

10. Regarding the argument that the claimed relationship is not between the purchaser and another entity but between the entity receiving the order and the entity fulfilling the order, note that in such an instance there are, in fact, two purchasers. The "entity receiving the order" must, of course, "order" the item themselves from the entity fulfilling the order, thus becoming a "purchaser" themselves. They are the middlemen, acting as both buyer and seller, buying the item



from the entity fulfilling the order (obviously it must be ordered and paid for or it wouldn't be delivered) and selling it to the end user/purchaser--not necessarily in that order.

11. Regarding the argument that Sharp et al. do not disclose horizontal interactions, Sharp et al. indeed disclose horizontal interactions. See, for example, column 3, lines 26-46, especially lines 29-32, where Sharp et al define "distributor" so as "to include distributors of a product at all levels in the distribution claim, including retailers." To the extent that applicant is arguing that the references applied in the rejection fail to use the same names for certain elements as the names used by applicant, the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but need not be in the identical words as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

12. Regarding the argument concerning concealing the identity of the purchaser, the identity of the purchaser is inherently concealed when one retailer orders an item from another entity, since it is the retailer, not the ultimate end-user, that places the order.

13. Regarding the argument that auctions/bidding and fixed price sales "are not equivalent, given the widely varying and unpredictable prices that may result from bidding versus the predictable price of a fixed-price catalog item," the argument is deemed specious, since no

contention was ever made that the two well known, “art-recognized equivalents for determining/setting a sales price for an item being sold,” would necessarily result in determining/setting/reaching the *same* price, merely *a* price.

14. Regarding the arguments *vis-à-vis* 37 CFR § 1.104(d)(2), the arguments are completely and utterly irrelevant, thus have been entirely disregarded, since the cited rule pertains only to rejections made “based on facts within the personal knowledge of an employee of the Office” (i.e., facts not necessarily known by anybody else), and no such rejection has been made at any time in the instant application.

15. Regarding the arguments concerning well known prior art (i.e., common knowledge, Official notice), applicant’s instant traversal and prior intended traversal are both inadequate, because: (1) statements of what is “well known” are never supported by affidavits as to what is solely within the “personal knowledge” of the examiner (i.e., the opposite of “well known”); and, (2) merely challenging the existence of well known prior art by arguing that the fact is not supported by a reference, without stating for the record that the examiner is wrong or that applicant is without knowledge of the prior art teaching, does not constitute a *proper* traversal of the finding(s). Therefore, as applicant’s traversals are all inadequate, applicant has failed to seasonably provide any *proper* traverse to the examiner’s stated positions as to what is well known prior art. Moreover, whereas applicant has failed to *seasonably* provide any *proper* traverse to the

examiner's stated positions as to what is well known prior art, and, as any further traversal (proper or not) would no longer be considered seasonable, the objects of the well known statements are therefore deemed and considered henceforth to be admitted prior art. See MPEP § 2144.03(C).

### *Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to the disclosure.

17. All rejected claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

18. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at **(571) 272-6771**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300**. Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

June 22, 2006

 6/22/06

Gerald J. O'Connor

Primary Examiner

Group Art Unit 3627